IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 80-581

COMMONWEALTH EDISON COMPANY, CENTRAL ILLINOIS LIGHT COMPANY, DAIRYLAND POWER COOPERATIVE, DETROIT EDISON COMPANY, INTERSTATE POWER COMPANY, LAKE SUPERIOR DISTRICT POWER COMPANY, LOWER COLORADO RIVER AUTHORITY/CITY OF AUSTIN, MINNESOTA POWER & LIGHT COMPANY, NORTHERN STATES POWER COMPANY, UPPER PENINSULA GENERATING COMPANY, WISCONSIN POWER & LIGHT COMPANY, DECKER COAL COMPANY, PEABODY COAL COMPANY, WESTMORELAND RESOURCES, INC. and WESTERN ENERGY COMPANY,

Appellants,

against

STATE OF MONTANA, TED SCHWINDEN, GOVERNOR OF MONTANA, HELEN J. FEAVER, DIRECTOR OF THE STATE DEPARTMENT OF REVENUE, and MAURICE L. BRUSETT, DIRECTOR OF ADMINISTRATION AND STATE TREASURER,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MONTANA

BRIEF AMICUS CURIAE OF THE WESTERN GOVERNORS' POLICY OFFICE (WESTPO) IN SUPPORT OF APPELLEES

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CONSENT OF PARTIES

Consents of all Appellants and all Appellees to the filing of this Amicus Brief have been obtained. Letters from counsel for all Appellants and all Appellees accompany this Amicus Brief for filing, unless they have been delayed in the mail, in which case they will be filed promptly upon receipt by counsel for Amicus.

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STATEMENT OF INTEREST OF AMICUS

The Western Governors' Policy Office (WESTPO) is an instrumentality of twelve States (Alaska, Arizona, Colorado, Idaho, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, and Wyoming). WESTPO's members are the Governors of those twelve states, and the twelve member Governors constitute WESTPO's Board of Directors.

WESTPO was organized in non-profit corporate form by the member Governors during the September, 1977 annual meeting of the Western States' Governors in Anchorage, Alaska, for exclusively governmental purposes, to provide an instrument for state policy management and a vehicle for collective expression and influence with respect to important state, regional, interstate, and federal-state issues.

As conceded by Appellants, "[t]his case . . . presents fundamental constitutional questions of the state's power to impose taxes in a factual context of extreme importance." Appellants' Brief at 7.

WESTPO agrees with Appellants' characterization of the case as presenting fundamentally important national, state, regional, and federal-state issues. Thus, this case presents issues squarely within WESTPO's responsibilities and interest. The instant case involves the traditional power of a state to tax the severance of coal resources, and thereby to generate revenue to provide for essential governmental services. Each of the WESTPO member states taxes the severance or production of natural resources.

WESTPO is deeply concerned about Appellants' challenges to this traditional state power on the basis of nebulous allegations of constitutional infirmity. Appellants' arguments support their own economic interest to the disadvantage of compelling state, regional and

national interests in providing for the present and future needs of state citizens.

ARGUMENT AND CONCLUSION

WESTPO concurs in and supports the arguments advanced in the Amicus Curiae Brief filed herein by the State of Wyoming and certain other States. For the reasons therein stated, WESTPO urges that the decison of the Supreme Court of the State of Montana herein be sustained.

Respectfully submitted,

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